

**DRAFT**

M/049/021

## BUSINESS & SALES CONTRACT

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### Preamble

MAY 28 2004

WHEREAS Emery Industrial Resources, Inc. (hereafter "Emery") is the leaseholder of interest to the Cherry Hill park Limestone Quarry located near Beaver Creek in Utah County, Utah, specifically in the NW 1/4 Section 36, Township 11 South Range 8 East, Salt Lake Base and Meridian;

DIV. OF OIL, GAS & MINING

WHEREAS Emery therefore is in control of valuable resources to sell and to have mined/excavated and be sold;

WHEREAS Nelco Inc Contractors (hereafter "Nelco") does business producing rock product, "producing" being defined as mining, crushing and screening rock, as necessary;

WHEREAS Nelco desires to do business with and obtain, purchase and produce rock and related resources from Emery; and

WHEREAS Emery & Nelco (hereafter collectively referred to as "the parties") desire to enter a business relationship whereby each party can attain its respective business desires;

NOW THEREFORE the parties, undersigned, hereby agree to the following terms of this Business and Sales Contract (hereafter "Contract") to define their business relationship.

### Terms

1. Emery has the right to make sales contacts and sell rock products of any and all specifications and quantities and will report such transactions to Nelco, who will produce said rock to buyer's specifications in a prompt and timely manner as negotiated and agreed to between Emery and the purchaser(s), however, in the event that Nelco is not in a position to accept any of these contracts then at this time Emery shall have the right to allow a third party contractor to move onto the premises and to mine, crush, screen and produce that amount needed to satisfy other contracts Emery may have.
2. Nelco will exclusively bear and hold Emery harmless from all costs of its production endeavors incident to this Contract, including the actual costs of production, employment associated with production (included any insurance, taxes and other costs associated with the regular course of its business).
3. All limestone purchases made by Nelco will be made by and through Nelco and



all invoices shall be made by Nelco for such sales.

4. Nelco agrees not to compete with Emery for the resale of the rock and will not sell any rock or rock products to Emery's clients.
5. Nelco will weigh all rock/rock product taken from Emery, regardless whether the rock will be sold by Nelco, and shall furnish copies of all weight slips to Emery monthly by the first business day of the following month.
6. All payments due under this Contract shall be made to Emery (checks are to be made out to "Emery Industrial Resources, Inc.") and shall be paid by Nelco within 30 days of receiving an invoice from Emery. Nelco will account to the Division and Emery and insure that 75 cents per ton will be put into the Nelco's account which is retained to cover reclamation costs. After the reclamation costs are satisfied then the 75 cents will be sent to Emery. The additional 25 cents per ton owed to Emery from Nelco will be paid to Emery for payment to the property owner, and Emery guarantees that payment will be made to the property owner.
7. Nelco acknowledges that it is fully aware of the status of the Cherry Hill Park Quarry with the State of Utah Division of Oil, Gas & Mining and the bond which needs to be satisfied prior to obtaining any mining permit by Emery, and therefore all terms of this Contract are subject to appropriate approval by the State of Utah.
8. As long as Nelco does not breach this Agreement, Nelco will be the exclusive contractor for this location, and will be entitled to renew the contract annually.
9. Nelco and its agents and employees shall hold Emery harmless against any and all claims for injury or death resulting from their operations on Emery's premises.
10. Either party may terminate this agreement upon giving at least 30 days written notice to the other party, but only after the 2004 calendar year.
11. This agreement may be assigned by either party, with prior approval in writing from other party.
12. In the event either party breaches the terms of this contract, the non-breaching party will notify the breaching party in writing and allow thirty (30) days to cure said breach. In the event the breach is satisfactorily cured, then there are no consequences. However, if the non-breaching party is not satisfied that the breach is cured, then this contract is considered terminated and all remaining monies or services due under the contract are immediately due to be paid or performed in full.
13. The parties agree that, in the event of any dispute arising between them



concerning the terms of this contract, they will first attempt to mediate a resolution to their dispute prior to filing any court action.

14. Nelco will custom crush various sizes of rock (as specified by Emery and others) for sale, at a mutually-agreeable comparative wholesale price, to Emery and others for resale, and will provide weight slips for every ton mined and removed.
15. As additional consideration to Emery, Emery reserves two hundred ton of limestone fines per year, if available, at no cost to Emery, as a byproduct of Nelco's crushing operation.
16. Upon receiving an order from Emery, Nelco agrees to utilize all due diligence in fulfilling the order in a timely manner. Nelco further agrees that Emery's orders will be first priority.
17. All notices between the parties shall be sent to the following addresses:

Emery Industrial Resources, Inc. Attention: Dan Powell 148 S. 100 East Spanish Fork, Utah 84660	Nelco Inc Contractors P.O. Box 282 Price, Utah 84501
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18. The parties agree that Utah will retain jurisdiction for enforcing the terms of this contract.
19. The parties agree that any terms of this contract deemed unenforceable, illegal or otherwise incompatible with the laws of the State of Utah will not effect the enforceability of any other term of this contract.
20. The parties agree that, in the event of any breach of this contract, the parties must first seek to cure the breach as set forth above in paragraphs 12 and 13, and thereafter the non-breaching party may proceed in accordance with the other terms of this contract setting forth provisions to remedy the harm done to the non-breaching party.
21. In the event that product is produced by Nelco and is stockpiled at the quarry premises and later sold by Emery to others, then at that time Nelco will be paid fair market value at an agreed-upon price for said stockpiled product.
22. The parties agree that the non-prevailing party will bear all costs associated with pursuing remedies, whether or not this matter goes to court, including attorney's fees, court costs and other reasonable costs.

## **Execution of this Agreement**

The parties, undersigned, agree to be bound by the terms of this agreement as of the latest date indicated below:

DATED \_\_\_\_ / \_\_\_\_ / \_\_\_\_

\_\_\_\_\_  
EMERY INDUSTRIAL RESOURCES, Inc.

By \_\_\_\_\_

Title \_\_\_\_\_

DATED \_\_\_\_ / \_\_\_\_ / \_\_\_\_

\_\_\_\_\_  
NELCO INC CONTRACTORS

By \_\_\_\_\_

Title \_\_\_\_\_